No. 80-1706

JUN 1981

In The

Supreme Court of the United States

October Term, 1980

DOUGLAS LaCHANCE,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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This Reply Brief is respectfully submitted in further support of Douglas LaChance's Petition for a Writ of

Certiorari. While petitioner's legal arguments are fully set forth in his original Petition, a short reply is necessary in order to correct the inadvertent factual inaccuracies which appeared in the Brief for the United States in Opposition [hereinafter cited as "U.S. Br."].

The Government claims that Mr. LaChance's contention, that the trial court violated his constitutional rights by considering in imposing sentence his refusal to cooperate in a criminal investigation on grounds of self-incrimination, may not be raised here because it was not raised in the Court of Appeals. (U.S. Br. at 10). Unfortunately for the Government, however, this issue <u>was</u> specifically raised in Mr. LaChance's reply brief in the Court of Appeals at 23-24, as

well as in the trial court. (Mr. LaChance's Response to the Government's Sentencing Memorandum at 6-7).

The Government states that Russ Trucking Corporation, of which petitioner was, according to the Government's evidence, an undisclosed principal, "profited from paying its drivers wages that were lower than those it would have had to pay if the drivers had been NMDU members." U.S. Br. at 3. The quoted statement has absolutely no support in the record whatsoever. This is the position petitioner maintained in the Court of Appeals.

In response to petitioner's argument that the Court of Appeals improperly unheld the cross-examination of Mr. LaChance as to prior, unrelated criminal convictions of his alleged associates (Petition for a Writ of

Certiorari at 29-37), the Government argues that, in response to petitioner's trial testimony that he rejected attempts by employers to buy his influence, "it was proper for the government to ask petitioner whether he knew of DiPalermo's and West's criminal records, in connection with other evidence that he and DiPalermo had discussed union matters, including the doing of favors for West and for DiPalermo's relatives." U.S. Br. at 4. However, the questions regarding DiPalermo (App. 1648-49)* and West (App. 1649-50) were limited to establishing whether LaChance knew these individuals and whether they had been convicted of precisely the same charges as LaChance was facing (extortion and

*"App." refers to the Appendix in the Court of Appeals.

tax evasion), and other serious offenses such as narcotic violations. The cross-examination, despite the Government's claims in the Court of Appeals and in this Court, was not designed to rebut any of Mr. LaChance's specific testimony; its effect was purely inflammatory. Moreover, the single fleeting reference on a tape recording admitted in evidence to Charlie West (App. 35) does not support the Government's claim that Mr. LaChance was "doing ... favors for West." (U.S. Br. at 4).

Similarly, the Government claims that "there was no impropriety in the government's inquiry concerning petitioner's knowledge of [Matthew] Troy's convictions, when the evidence showed that petitioner had enlisted Troy's assistance in removing NMDU's pension and welfare funds from one institution

to another." (U.S. Br. at 4-5). The simple answer to this assertion is that no such evidence appears anywhere in the record.*

While the Government suggests that Mr. LaChance has not properly preserved this issue for review by failing to seek a curative instruction (U.S. Br. at 5 n. 4), this argument is without merit in the light of Mr. LaChance's motion for a mistrial based on this cross-examination. (App. 1650-51).

As to petitioner's contention that venue was not proven on the Taft-Hartley counts (Petition for a Writ of Certiorari at 38-40), the Government

*The Government asked Mr. LaChance on cross-examination if any such plan to transfer the pension funds had ever existed, and Mr. LaChance replied that it had not. (App. 1626-27). No other evidence on this point was ever introduced.

claims, without citation to the record, that "the evidence established that the payments were solicited within the Southern District by Leon Braunstein, petitioner's middleman." (U.S. Br. at 8). In fact, as to the challenged counts, there was no such evidence. Indeed, the Court of Appeals did not rely on such claimed solicitations in upholding venue on these counts (Supp. App. at A8-A14),* but rather relied on other evidence, whose legal sufficiency to establish venue has been challenged by petitioner. (Petition for a Writ of Certiorari at 38-40).

Finally, the Government seeks to uphold venue on the tax evasion counts by claiming that "[w]hile it is true

*"Supp. App." refers to petitioner's Supplemental Appendix in this Court.

that petitioner's tax returns were not prepared, signed or filed within the Southern District, the evidence showed that the unreported income consisted of undocumented secret cash payoffs received within the Southern District" (U.S. Br. at 9) and hence "constitutes an affirmative act of evasion." (Id.) Here again, the Government misstates the record. There was no evidence of any steps taken by LaChance to assure that the alleged payments were in cash. Further, since LaChance lived in the Eastern District of New York, any alleged failure to keep records presumably occurred there. Moreover, records concerning some of the allegedly payments, allegedly created in the Southern District at LaChance's direction and with his assistance, were

introduced in evidence at trial as Government exhibits.

Accordingly, it is respectfully submitted that Mr. LaChance's petition for a writ of certiorari should be granted.

Respectfully submitted,

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